

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #2	CCRB Case #: 201609147	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/06/2016 1:30 AM	Location of Incident: 1375 Boston Road	Precinct: 42	18 Mo. SOL 4/6/2018	EO SOL 4/6/2018	
Date/Time CV Reported Tue, 11/01/2016 3:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/01/2016 3:42 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Fidel Rosario	02850	943759	042 PCT
2. An officer			042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Britton	00229	952496	042 PCT
2. POM Andrew Yakubovsky	17793	949813	042 PCT
3. POM Edgar Duncan	20691	946961	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario stopped § 87(2)(b)	
B.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario frisked § 87(2)(b)	
C.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario stopped § 87(2)(b)	
D.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario stopped § 87(2)(b)	
E.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario stopped § 87(2)(b)	
F.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario frisked § 87(2)(b)	
G.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario frisked § 87(2)(b)	
H.SGT Fidel Rosario	Abuse: Sergeant Fidel Rosario frisked § 87(2)(b)	
I. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

### Case Summary

On November 1, 2016, § 87(2)(b) § 87(2)(b) filed this complaint with the CCRB via telephone on behalf of his client, § 87(2)(b).

On October 6, 2016, at approximately 1:30 a.m., § 87(2)(b) was outside of Halal Kennedy Fried Chicken at 1375 Boston Road in the Bronx. § 87(2)(b) was with his brother, § 87(2)(b) his cousin, § 87(2)(b) and a third individual who was identified by the investigation as § 87(2)(b). Sergeant Fidel Rosario, Police Officer Christopher Britton, and Police Officer Andrew Yakubovsky of the 42<sup>nd</sup> Precinct Anti-Crime team parked in front of the location in an unmarked RMP and exited the vehicle. The officers suspected one person in the group of being involved in menacing a civilian, § 87(2)(b) with a gun approximately five to ten minutes prior.

Police Officer Yakubovsky detained § 87(2)(b) outside and Police Officer Britton and Sergeant Rosario entered the location (**Allegation A**). One of the officers patted down the exterior of § 87(2)(b)'s clothing but did not search him (**Allegation B**). Officers also patted down § 87(2)(b) and § 87(2)(b) (**Allegations C, D, E, F, G, and H**). A patrol unit arrived at the location. § 87(2)(b) who was in the back of the marked vehicle, identified § 87(2)(b) as the person who had pointed a firearm at him earlier in the evening.

§ 87(2)(b) was placed in handcuffs and an unidentified plainclothes officer allegedly told § 87(2)(b) to “back the fuck off,” (**Allegation I**). § 87(2)(b) was transported to the stationhouse and charged with criminal possession of a weapon (Board Review 01).

This investigation exceeded 90 days due to the difficulty in scheduling § 87(2)(b) for an interview and in identifying and contacting the various victims involved in this incident.

Fieldwork was conducted at the incident location on January 5, 2017, but no witnesses to the incident or extant video footage were located. Video was obtained for this incident from an NBC I-team report that was aired on November 17, 2016. This video can also be found in IA #43 (Board Review 02). The video shows uniformed officers escorting § 87(2)(b) following his arrest in this incident.



2017-03-07\_16-35-38.mp4

### Mediation, Civil and Criminal Histories

This case was not suitable for mediation due to § 87(2)(b)'s arrest. A Notice of Claim inquiry was sent to the New York City Comptroller's Office and the result will be added to the case file upon receipt.

As of December 9, 2016, the criminal court case resulting from § 87(2)(b)'s arrest in this incident, was open with next court date scheduled for § 87(2)(b). However, as of § 87(2)(b) it no longer appears in the Office of Court Administration database (Board Review 03).

§ 87(2)(b) does not have a criminal conviction history. § 87(2)(b)



- § 87(2)(b)
- Sergeant Fidel Rosario has been a member of the NYPD for ten years and has had two prior CCRB allegations within two cases and no substantiated allegations filed against him. § 87(2)(g) (Board Review 12).

### **Potential Issues**

Multiple letters, emails, text messages and phone calls were made to § 87(2)(b) for follow-up questions and to his brother, § 87(2)(b) for a statement. Despite these efforts and an attempt to reach them through § 87(2)(b) they did not respond to these attempts to contact them. § 87(2)(b) was contacted but refused to provide a statement concerning this incident. § 87(2)(b) was unable to provide any information regarding § 87(2)(b) and the investigation was unable to reach him via the contact information found for him via NYPD documents and database searches. Therefore, no statements were obtained from the other victims involved in this case.

§ 87(2)(b), § 87(2)(a) CVR § 50-b

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

§ 87(2)(b) stated that he and his friends were stopped by two plainclothes officers. One officer was described as a Hispanic male in his 30s with black hair and the other was described as a black male in his 30s with a shaved head. § 87(2)(b), § 87(2)(g)

These officers were two white males with light brown hair in their early-30s and a Hispanic male Sergeant with a full head of dark hair. None of these officers matched the descriptions provided by § 87(2)(b)

The investigation could not reconcile specific roles for the identified officers who were involved in this incident with the descriptions provided by § 87(2)(b). Additional and significant discrepancies in the order of events of the incident between the individual officers and § 87(2)(b) made it difficult to determine which specific officer conducted which specific action. Because Sergeant Rosario was the ranking officer on location, was present for the entire incident, and admitted to detaining all of the men present, Allegations A through H are pleaded against him.

§ 87(2)(b) described the officer who spoke discourteously to § 87(2)(b) as a black male in plainclothes with a shaved head. As started above, this description did not match any of the officers who responded to this incident. Therefore, Allegation I is pleaded against ‘an officer.’

### **Allegations not pleaded**

- § 87(2)(b) alleged that he experienced stomach pains while in the cell area and that he mentioned these concerns to unidentified officers. § 87(2)(b) did not request medical treatment and did not independently seek medical treatment upon his release. The officers investigated in relation to this case did not hear § 87(2)(b) ever complain of stomach pain. Therefore an allegation of refusal to provide medical treatment is not pleaded.
- § 87(2)(b) alleged that Detective David Terrell of the 42<sup>nd</sup> Precinct pushed § 87(2)(b) into a cell at the 42<sup>nd</sup> Precinct stationhouse and struck him with an open palm. § 87(2)(b) did not allege that this occurred and an interview with § 87(2)(b) in regards to CCRB case number 201609146, determined that this alleged action occurred during that incident. Therefore, an allegation of force is not pleaded in regards to this incident.

### **Allegation A – Abuse of Authority: Sergeant Fidel Rosario stopped § 87(2)(b)**

### **Allegation B – Abuse of Authority: Sergeant Fidel Rosario frisked § 87(2)(b)**

On November 1, 2016, this complaint was filed with the CCRB by § 87(2)(b) a § 87(2)(b) who is working with the § 87(2)(b) family. On November 17, 2016, § 87(2)(b) provided a verified statement to the CCRB. On December 19, 2016, § 87(2)(b) provided a telephone statement to the CCRB (Board Review 14). On January 18, 2017, Police Officer Christopher Britton was interviewed at the CCRB. On January 31, 2017, Police Officer Andrew Yakubovsky was interviewed at the CCRB. On February 9, 2017, Sergeant Fidel Rosario was interviewed at the CCRB.

It is undisputed that § 87(2)(b) called 911 and reported that an approximately § 87(2)(b)-old Hispanic male wearing an orange sweatshirt and gray pants, who was part of a group, pointed a gun at him. It is also undisputed that § 87(2)(b) a § 87(2)(b)-old Hispanic male, was stopped by officers less than 10 minutes after the incident was reported and approximately four blocks away, wearing an orange hooded sweatshirt and gray pants. § 87(2)(b) arrived at the location of § 87(2)(b)'s detainment and identified him as the male who pointed the gun at him.

§ 87(2)(b) stated that he had been at home when he decided to join his brother, § 87(2)(b) his cousin, § 87(2)(b) and his brother's friend, § 87(2)(b) on a walk to the Halal Kennedy Fried Chicken. While entering the store, two police officers detained § 87(2)(b) outside and permitted the rest of the men to enter. One of these officers immediately placed § 87(2)(b) against the wall § 87(2)(b), § 87(2)(a) CVR § 50-b” and the pockets of his sweatshirt and his sweatpants. One of these officers called for an additional police vehicle to respond to the location. One of the officers approached the police vehicle and returned shortly after and said, “The one with the orange hoodie.” At this time, § 87(2)(b) was placed in handcuffs and transported to the 42<sup>nd</sup> Precinct stationhouse. § 87(2)(b) later learned that he was being charged with possession of a firearm. § 87(2)(b) denied being in possession of a firearm on this night.

§ 87(2)(b) stated that he was walking home and was at the intersection of Franklin Avenue and East 170<sup>th</sup> Street when he was approached by a group of approximately 12 men, including one approximately 17 or 18-year-old Hispanic male dressed in an orange hooded sweatshirt. The male in the orange hooded sweatshirt pointed a firearm at § 87(2)(b) and spoke to him in a menacing manner. § 87(2)(b) fled from the location to his home where he called 911. § 87(2)(b) was picked up by uniformed officers and brought to the Halal Kennedy Fried Chicken shortly after. § 87(2)(b) observed his assailant inside of the store with six other men speaking with two uniformed officers. After § 87(2)(b) identified his assailant, § 87(2)(b) was placed in handcuffs, frisked, and placed under arrest.

Sergeant Rosario stated that he received a radio run concerning a group of males with a firearm at the corner of Fulton Avenue and East 170<sup>th</sup> Street. Sergeant Rosario could neither recall the size of the group nor the details of the provided clothing description. The officers immediately proceeded to the area and conducted a canvass. Sergeant Rosario observed a group of five men at the intersection of Boston Road and Crotona Avenue, a one minute drive from the incident location. All five men entered the Halal Kennedy Fried Chicken at the corner and the officers parked outside and followed them in. Sergeant Rosario recalled that the clothing the men were wearing matched the description in the radio run but could not recall this description specifically at the time of his CCRB interview. Sergeant Rosario further stated that the proximity of the men to the incident location and the fact that they were the only group of people observed walking, led him to suspect them of being involved with the reported crime. Sergeant Rosario did not believe that the radio run specified which group member was in possession of the firearm.

Sergeant Rosario did not suspect any particular member of the group of possessing a firearm and did not observe any bulges on the men in the group. Sergeant Rosario stated that some of the men in the group were frisked but could not say who. Sergeant Rosario did not know if § 87(2)(b) was one of the men frisked at this time. A sector unit with the victim arrived at the location and one of the men in the group was identified as the assailant and placed § 87(2)(b) in police custody. Sergeant Rosario could not recall what § 87(2)(b) was wearing or whether he was one of the men who were frisked prior to the arrival of the sector unit. Officers from the command returned to the Halal Kennedy Fried Chicken later that day and were told by an employee that some members of the detained group returned after the police had been there and removed a firearm from behind a toy vending machine.

Police Officer Yakubovsky stated that the officers received a radio run concerning a group with a firearm menacing an individual at the intersection of East 167<sup>th</sup> Street and Franklin Avenue in the Bronx. Police Officer Yakubovsky further stated that the assailant who was identified as possessing the firearm was dressed in an orange hooded sweatshirt. The officers immediately canvassed the area and identified a group of four to five males approximately one block away after five minutes. § 87(2)(b) was with the group and was wearing an orange hooded sweatshirt. The men entered the Halal Kennedy Fried Chicken at the intersection and the officers parked outside the location. § 87(2)(b) immediately returned outside and Sergeant Rosario and Police Officer Britton passed him as they entered. Police Officer Yakubovsky remained outside with § 87(2)(b).

As per Police Officer Yakubovsky, § 87(2)(b) was considered detained until § 87(2)(b) arrived to determine whether or not he was his assailant. § 87(2)(b) was being detained because he matched the perpetrator's description, was near the incident location, and was travelling in a group, as described by the radio run. The unit had requested that a uniformed unit bring § 87(2)(b) to the location at this point. The unit arrived approximately five minutes later and § 87(2)(b) was identified as the assailant and placed under arrest. Police Officer Yakubovsky could not recall whether he frisked § 87(2)(b) prior to the arrival of the marked unit carrying § 87(2)(b). Police Officer Yakubovsky could not recall whether he had any physical contact with § 87(2)(b) prior to the arrival of § 87(2)(b).

Police Officer Britton stated that the officers received a radio run regarding a male with a gun who was traveling with a large group at the corner of Fulton Avenue and East 169<sup>th</sup> Street in the Bronx. The radio run further stated that the male in question, described as Hispanic male with an orange hooded sweatshirt and gray sweatpants, pointed a firearm at an individual at that location. Approximately five minutes after receiving the radio run, the officers identified a group of five men walking at the intersection of Crotona Avenue and Boston Road, three blocks away from the incident location. § 87(2)(b) was with the group and was dressed in an orange hooded sweatshirt and gray sweatpants. The five men walked into a Halal Kennedy Fried Chicken at the corner and all three officers followed them in.

As per Police Officer Britton, the officers spoke to all three men and did not address any of them individually. The officers were intent on keeping the men at the location until a marked unit arrived with § 87(2)(b) to identify his assailant. § 87(2)(b) was frisked and placed under arrest after § 87(2)(b) identified him as his assailant and not before. Police Officer Britton was shown a copy of the Stop, Question, and Frisk Report that he filled out for § 87(2)(b) (Board Review 25). Police Officer Britton could not confirm whether he or another officer conducted the frisk for which the report was filled out. Officers later recovered a video from the original incident location that showed § 87(2)(b) pointing a firearm at § 87(2)(b).

The Stop, Question, and Frisk Report for this incident, filled out by Police Officer Britton, indicated that the stop of § 87(2)(b) was based on a radio run. § 87(2)(b) was suspected of criminal possession of a firearm and menacing. § 87(2)(b) was dressed in an orange sweatshirt and gray pants and was in the approximate location that the victim stated he would be in which was near the incident location. § 87(2)(b) was positively identified by the victim and was frisked and searched incident to his arrest. The Stop, Question, and Frisk Report notes that one other individual was stopped at this time.

A transcription of the 911 call for this incident indicated that § 87(2)(b) described his assailant as an 18-year-old Hispanic male wearing an orange hooded sweatshirt and gray sweatpants and travelling with a group of seven men. The male pointed a firearm at § 87(2)(b) before walking away on East 170<sup>th</sup> Street towards Boston Road (Board Review 18). The radio communications indicated that the 42<sup>nd</sup> Precinct Anti-Crime team had a group of men detained at Crotona Avenue and Boston Road eight minutes after the 911 call was made (Board Review 19).

An officer has reasonable suspicion to stop and detain a person based upon the general description of a perpetrator, the person's close proximity to the site of the crime, and the short passage of time between the crime and the observation of the defendant. People v. Bennett, 27 N.Y. 3d 483 (2007) (Board Review 20). A frisk is justified if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. People v. De Bour, 49 A.D. 2d 1038 (1976) (Board Review 21). The officer need not have an independent and particularized belief that the suspect is armed if that suspect was reported to be in possession of a weapon. People v. Torres, 1997, 39 A.D. 2d 154 (Board Review 22).

§ 87(2)(b) was wearing a specific and identifiable orange hooded sweatshirt and was travelling with a group of males when he was detained by the police. In addition to matching the clothing description and traveling with a group of companions, § 87(2)(b) was identified within minutes of the incident occurring and was located at a business approximately two blocks away in the direction § 87(2)(b) last saw the men walking in. All information concerning § 87(2)(b)'s dress, company, and direction of movement were relayed to the responding officers.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation C – Abuse of Authority: Sergeant Fidel Rosario stopped § 87(2)(b)**  
**Allegation D – Abuse of Authority: Sergeant Fidel Rosario stopped § 87(2)(b)**  
**Allegation E – Abuse of Authority: Sergeant Fidel Rosario stopped § 87(2)(b)**  
**Allegation F – Abuse of Authority: Sergeant Fidel Rosario frisked § 87(2)(b)**  
**Allegation G – Abuse of Authority: Sergeant Fidel Rosario frisked § 87(2)(b)**  
**Allegation H – Abuse of Authority: Sergeant Fidel Rosario frisked § 87(2)(b)**

§ 87(2)(b) alleged that he observed Sergeant Rosario and either Police Officer Yakubovsky or Police Officer Britton detain and pat down the exterior clothing of § 87(2)(b) and § 87(2)(b) did not see the officers put their hands inside the pockets of any



of the detained men. The three men were then led outside where they were told to stand against the exterior wall of the Halal Kennedy Fried Chicken where they were detained until § 87(2)(b) was identified by § 87(2)(b) and placed under arrest.

Sergeant Rosario stated that he counted five men in the group including § 87(2)(b). The men observed the police vehicle as it approached without lights or sirens and made frequent furtive glances at it as they walked inside of the Halal Kennedy Fried Chicken. The men matched the clothing description provided in the radio run, though Sergeant Rosario did not associate any one man in particular with the firearm reported in the radio run and did not see any bulges on their clothing. Sergeant Rosario immediately conducted frisks of the men at the location but did not recall exactly how many of the men were frisked. Sergeant Rosario stated that the men were being frisked to ensure that they did not have firearms and to ensure officer safety.

Police Officer Yakubovsky stated that Police Officer Britton and Sergeant Rosario entered the Halal Kennedy Fried Chicken while he waited outside with § 87(2)(b). Police Officer Yakubovsky did not personally see the other men get frisked and did not know if they were considered free to go during this time. Police Officer Yakubovsky could not see into the interior of the Halal Kennedy Fried Chicken from where he was standing outside with § 87(2)(b).

Police Officer Britton stated that the radio run for the incident included the description of a male in a brown shirt. This was the only clothing description provided in addition to § 87(2)(b). Police Officer Britton stated that all three officers followed the group into the Halal Kennedy Fried Chicken. The men were considered detained at this time and until a marked unit arrived with the victim to identify his assailant. Police Officer Britton initially stated that the officers did not frisk the civilians during this time and § 87(2)(b) was only frisked incident to his arrest. After he was shown a Stop, Question, and Frisk Report filled out by himself for § 87(2)(b), Police Officer Britton acknowledged that § 87(2)(b) was frisked and searched and stated that it was because he was wearing a brown shirt and because Police Officer Britton had arrested him in the past for firearm possession. This information was reflected in the Stop, Question, and Frisk Report (Board Review 25). Police Officer Britton could not recall which officer searched § 87(2)(b) or at what point during the incident this occurred.

An officer is allowed to conduct a forcible stop of a person if the officer has reasonable suspicion of criminality. A frisk is justified if the officer reasonably suspects that the detainee is armed. People v. De Bour, 49 A.D. 2d 1038 (1976) (Board Review 21). A frisk is permissible only if an officer possesses a particularized, reasonable suspicion that a suspect is armed. People v. Gonzalez, 295 A.D. 2d 183 (2002) (Board Review 23). An individual's mere presence in the company of another person whom the police have probable cause to arrest does not create reasonable suspicion to justify a stop or frisk of the individual. People v. McLoyd, 35 Misc. 3d 822 (2012) (Board Review 26). Knowledge of a person's past record can be considered a relevant factor in determining whether a police officer's conduct during an encounter is reasonable, provided there is also some present indication of criminality based upon observable conduct or reliable hearsay information. People v. Boulware, 130 A.D.2d 370 (1987) (Board Review 24).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted].

**Allegation I – Discourtesy: An officer spoke discourteously to** § 87(2)(b)

[Redacted] alleged that a plainclothes officer said, “Get the fuck back,” to his brother, § 87(2)(b). As stated above, § 87(2)(b) s descriptions of the officers involved in this incident vary widely from the profiles of the Anti-Crime officers who responded. Sergeant Rosario and Police Officers Britton and Yakubovsky denied using any profanity during this encounter, though all three noted that the men in the group became disorderly while § 87(2)(b) [Redacted] was being placed into custody and placed in a police vehicle.

§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted].

Squad: 2

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

